

## IN THE SUPREME COURT OF MISSISSIPPI

TIMOTHY ROBERT RONK

APPELLANT

v.

No. 2011-DP-00410-SCT

STATE OF MISSISSIPPI

APPELLEE

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# SUPPLEMENTAL REPLY BRIEF OF THE APPELLANT

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Appeal from the Circuit Court of Harrison County,  
First Judicial District  
No. B2401-2009-0434

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## ARGUMENT

The Supplemental Brief of the Appellee (hereafter “Supp. Aee.”) makes almost no substantive response to Ronk’s arguments answering the Court’s relatively narrow query. Ronk will therefore not burden the Court by repeating those arguments here. He will instead attempt to put to rest, as briefly as possible, the largely inapposite matters the State offers in lieu of a substantive response.

The initial claim of procedural bar is particularly inapposite. As a matter of this Court’s established jurisprudence, “[a]n error concerning the refusal of jury instructions is procedurally preserved by the mere tendering of the instructions, suggesting that they are correct and asking the Court to submit them to the jury.” *Neal v. State*, 15 So. 3d 388, 408 (Miss. 2009) (internal quotation marks omitted). Moreover, under the facts of this particular matter, the manslaughter instruction would be relevant to the robbery only if, and for the same reasons as, it was a proper lesser-included offense of the capital murder. Hence, the trial court’s refusal of it actually did subsume this question sufficiently to make it a natural part of Ronk’s claim of instructional error. Finally, as the State acknowledges, even if more were required, this Court always has the power to review and remedy any error that affects the fundamental rights of a criminal accused or the fundamental fairness of a trial. Supp. Aee. at p. 2, citing *McGee v. State*, 953 So. 2d 211 (Miss. 2007). Instructional errors that impair the jury’s ability to consider a defendant’s theory of defense do both. *Banyard v. State*, 47 So. 3d 676 (Miss. 2010).

Nor does this Court’s question, or Ronk’s response to it, propel this Court down the slippery slope of declaring that conviction of *any* kind of manslaughter in

*all* instances creates an absolute defense to *any* armed robbery charged in the same indictment. *See* Supp. Aee. at pp. 3-5. This Court's much more modest query, and Ronk's much more modest response to it, rest entirely on the unusual combination of legal and factual circumstances of the matter *sub judice*.

As a matter of law, imperfect self-defense manslaughter is unlike most other forms of manslaughter. Most require no intent of any kind to be established. Guilt of imperfect self-defense manslaughter, by contrast, affirmatively requires proof of both an intentional killing and of a very specific mental state on the part of the accused in connection with that killing: A good faith but unreasonable belief that it was necessary to kill the decedent because the decedent was the aggressor in the interaction, intended to kill the accused or do him great bodily harm, and had the immediate means available to carry out that intent. *See Wade v. State*, 748 So. 2d 771, 775 (Miss. 1999); Miss. Code Ann. § 97-3-35.

This case also presents an atypical congruence of three factual circumstances that rarely occur in combination. First, the robbery was charged as a separate count in a capital murder indictment using a non-robbery capitalizing felony. Second, the only act of force in question was the actual killing of the decedent. Third, there is affirmative proof of an intent associated with that particular act of killing other than to accomplish the taking of personal property. There are myriad situations where these circumstances do not all occur in combination. In most instances, the manslaughter conviction is not based on imperfect self-defense. Similarly, more often than not, there is evidence of some other or additional force in furtherance of the separately charged robbery beyond the lethal event that was the basis for the

manslaughter conviction. Indeed, several such circumstances are illustrated by the cases – most of them discussing guilty pleas – cited in the State’s brief. *See* Aee. Supp. at pp. 4-5. In those instances, this Court has properly left combined robbery and manslaughter pleas and convictions undisturbed; and there will be nothing to prevent it doing so when the facts warrant it in future cases.

Likewise, the problem raised here is not merely one of “inconsistent” verdicts, Aee. Supp. at pp. 5-6, but the fact that the jury was deprived due to instructional error of any opportunity to consider one possible verdict at all. *Banyard*, 47 So. 3d 676).<sup>1</sup> Moreover, verdicts finding that the exact same conduct was motivated by *both* an unreasonable but *bona fide* belief that the use of force was the result of aggression by the decedent and necessary for self-preservation, *Wade*, 748 So. 2d at 775; and *simultaneously* by an intent that was exactly the opposite – to initiate aggression *against* the decedent in order to unlawfully deprive the decedent of property, *Veazy v. State*, 113 So. 3d 1226, 1229 (Miss. 2013), are not merely “inconsistent.” They are arguably mutually exclusive.

Finally, Ronk turns to the State’s baffling discussion of retroactivity. Aee. Supp. at pp. 6-7, citing *Teague v. Lane*, 489 U.S. 288, 310 (1989). Even if this Court were, as is its prerogative, to decide this case by announcing a new procedural constitutional rule, *see Schriro v. Summerlin*, 542 U.S. 348, 351-42 (2004), *Teague*

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<sup>1</sup> The State asserts that Ronk seeks reversal “only” because a manslaughter conviction would make the “evidence of armed robbery *per se* ‘legally insufficient,’” Aee. Supp. at p. 6. This assertion is particularly incorrect in connection to this claim. Ronk’s Brief in Chief also expressly argues in the alternative that reversal and a new trial are warranted because the evidence in this case is sufficient to pose at least a jury question about his actual intent, and because the jury was unable to consider that question properly due to the instructional error. *See* Supplemental Brief of Appellant at pp. 8-9.

does not prevent according Ronk, or any other litigant whose case is on direct appeal at the time the rule is announced, for that matter, any relief that the new rule entitles him to receive. *Summerlin*, 542 U.S. at 351. *Teague* applies only where the litigant's conviction became final before the case announcing the new rule came down and precludes setting aside those final convictions. *Teague*, 489 U.S. at 294.

The fact that this case is the one in which the constitutional wrong occurred also disposes of any claim that this Court would be issuing an advisory opinion. Aee. Supp. at pp. 7-8. Ronk was convicted of armed robbery by a jury that was deprived of the chance to consider either an alternative intent for the use of the force or Ronk's theory of defense based upon that intent. That conviction was thus obtained in violation of the due process clause and is the very material adverse consequence of that violation. That consequence is something this Court may, and should, remedy with reversal and remand for a new trial. *Banyard*, 47 So. 3d 676).

In all other respects, Ronk either anticipated the State's responses in his Supplemental Brief, or the State has made no substantive response to his brief at all. Ronk therefore relies upon his prior briefing for all other matters.

#### CONCLUSION

For the foregoing reasons, Ronk respectfully submits that this Court's analysis of the trial judge's denial of the defendant's imperfect self-defense instruction should relate to the defendant's armed robbery conviction as well as his capital murder conviction. He further respectfully submits that both convictions should therefore be reversed due to the erroneous denial by the trial court of Ronk's requested imperfect self-defense manslaughter instruction, and this matter

remanded to the Circuit Court of Harrison County for a new trial on all counts charged.

Respectfully submitted,

Timothy Robert Ronk, Appellant

By: /s/ Alison Steiner.

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#### CERTIFICATE OF SERVICE

I, Alison Steiner, counsel for Timothy Ronk, hereby certify that I have this day filed and served by means of the electronic case filing system the foregoing Supplemental Reply Brief of the Appellant, pursuant to Mississippi Rule of Appellate Procedure 25 by which immediate notification to all ECF participants in this cause is made. In addition, the following non-ECF participants are served by United States Mail, first class first class postage prepaid:

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THIS the 23<sup>rd</sup> day of December, 2013.

/s/ Alison Steiner.

Alison Steiner, Miss Bar No. 7832